

APPEAL NO. 032293  
FILED OCTOBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 4, 2003. The hearing officer determined that respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter but that he is entitled to SIBs for the sixth quarter. Appellant (carrier) appeals only the determinations regarding the sixth quarter. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant had no ability to work during the qualifying period for the sixth quarter. The qualifying period for the sixth quarter was from December 26, 2002, through March 26, 2003. Claimant had spinal surgery for his compensable injury in \_\_\_\_\_. Reports from January 2003 show that claimant was diagnosed with a pseudoarthrosis at C6-7. Claimant had another spinal surgery on March 3, 2003, during the qualifying period for the sixth quarter. One issue in this case is whether there was an adequate narrative for the period from December 26, 2002, through March 3, 2003. This case is complicated by the fact that the hearing officer appears to have made conflicting findings regarding the adequacy of the narratives in this case. The hearing officer found they were not adequate with regard to the fifth quarter, but apparently found they were adequate regarding the sixth quarter. She also found claimant was able to do some work during the fifth quarter qualifying period, but not during the qualifying period for the sixth quarter. We note that, with regard to the fifth quarter, the hearing officer found that certain narratives did not adequately explain why claimant could not work. We are not bound by the hearing officer's determinations regarding those narratives and we will decide the issue of whether there is an adequate narrative for the sixth quarter as a question of law. We will not consider any seeming conflict in the findings between the two quarters as it is not necessary to the resolution of the appealed issues.

Regarding whether claimant had an ability to work during the qualifying period for the sixth quarter, we conclude that the hearing officer could find from the evidence that claimant had no ability to work. The hearing officer could find from the reports of Dr. P that claimant's condition was deteriorating. Although Dr. P indicated in September 2002 that he believed claimant had "fused without incident" after his \_\_\_\_\_ surgery, a later CT scan showed that claimant had a pseudoarthrosis at C6-7. By December 2002 claimant had decreased range of motion (ROM) and by January 24, 2003, he had radiculopathy, decreased sensation in his finger, and weakness of the triceps and other muscles. Dr. P also noted that the triceps reflex was absent and recommended surgery to correct the pseudoarthrosis that had been diagnosed. Given the progression of

symptoms, we conclude that the hearing officer's determination regarding claimant's ability to work during the sixth quarter qualifying period is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Carrier asserts that the claimant's own testimony shows he could work. However, this was a fact issue and the hearing officer weighed claimant's testimony about his job search along with the medical evidence in making her determinations.

We next consider whether the hearing officer could find from the evidence that there was an adequate narrative in this case. In a September 27, 2002, narrative, Dr. P said he doubted whether claimant could work and noted that claimant had debilitating pain and atrophy. Dr. P appeared to indicate that the use of more medications could cause claimant to further injure himself. In a December 3, 2002, narrative, Dr. P became more insistent that claimant could not work. Dr. P noted that claimant also had decreased ROM due to the injury. He said:

The patient has not been able to return to any type of gainful employment due to his findings [sic]. He has [been] deemed totally disabled due to the severity of pain, which requires the continued use of anti-inflammatory medication, medications to decrease muscle spasms, and medications for pain. Any type of travel that includes more than 30 minutes the patient complains of severe pain which decreases with the use of medications. I do feel that . . . the patient is not able to travel greater than a 15-mile radius from his home . . . .

In his September 2002 and December 2002 reports, Dr. P mentioned atrophy, debilitating pain, muscle spasms which caused decreased ROM, the fact that travel causes more pain and use of more medications, and the fact that the use of medications might cause claimant to further injure himself. Reading these reports together with the January 24, 2003, report from Dr. P indicating that claimant's symptoms had increased by that time, we conclude that the evidence is minimally sufficient to support the hearing officer's implied determination that claimant provided a narrative report from a doctor that specifically explains how the injury causes a total inability to work during the sixth quarter qualifying period.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Chris Cowan  
Appeals Judge